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IBM CORPORATION (RHF)
C/O ROBERT H. FRANTZ
P. O. BOX 23324
OKLAHOMA CITY, OK 73123

EXAMINER
MILLER, ALAN S

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 February 2009</u>.

2a)☒ This action is FINAL. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>14 and 40-43</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>14 and 40-43</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>15 April 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the amendment filed 2/2/2009, supplemental

amendment filed 4/28/2009, in regards to the application filed 4/15/2004.

Claims 14 and 40-43 are pending and have been examined.

This action has been made FINAL.

Response to Arguments

2.   Applicant's arguments filed 4/28/2009 have been fully considered but they are not

persuasive.

Applicant argues that since Benjamin, Main and Shoquist are silent regarding

OLTP, and since OLTP is different than batch jobs, that therefore Benjamin, Main and

Shoquist are not obvious over the claims. Examiner respectfully disagrees.

While there may be a difference in the actual type of program, batch jobs versus

OLTP, the claim is not directed towards the program; rather it is directed to a report with

statistics. The claim recites "receiving one or more grid resource self-reports, each self-

report having statistics regarding Online Transaction Processing job processing".

However, the recited limitation "statistics regarding Online Transaction Processing job

processing" is merely nonfunctional descriptive material, since it is merely describing the

type of source which the data is from, then statistics are about this data, and the statistics

are then on a report. The steps of: receiving a grid self-report, accessing one or more

Service Level Agreements, receiving one or more job results, performing an analysis of

said received job results and said received self-reports, and producing a grid resource

table would be performed the same regardless of the data. Thus, this descriptive material

will not distinguish the claimed invention from the prior art in terms of patentability, see
In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Lowry, 32 USPQ2d 1031 (Fed. Cir.
1994);

Applicant further argues that there is a functional responsive link between the first
element and the second element (i.e. responsive to receiving said self reports, accessing
one or more Service Level Agreements). However, Applicant's specification discloses
that "The rating logic obtains real-time data from the grid resources in self-reported job
statistics" (¶0041), "The GRRL automatically compares job processing data for each job
and each resource against related SLA criterion" (¶0041) and "the client's job is
submitted, and SLA monitoring begins...When a job completes, the SLA monitoring also
stops. The job results are compared against SLA, including consideration of resource
self-reported statistics" (¶0047). See also Applicants Figure 1. The specification recites
that the SLA is monitored during the job, and the job results, and the self-reports, are then
measured against the SLA. This is different than what has been claimed, since the claim
recites that the SLA is not accessed until the self-reports are received.

In regards to Applicants arguments regarding the further amendments to claim 14,
the are addressed in the following office action.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

4.   Claims **14 and 40 – 43** are rejected under 35 U.S.C. 112, first paragraph, as
failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s), at the time the application

was filed, had possession of the claimed invention.

Claims 14, 40 and 41 recite the limitation " responsive to receiving said self

reports, accessing one or more Service Level Agreements", however, turning to

Applicants specification for clarification, Applicant's specification discloses that "The

rating logic obtains real-time data from the grid resources in self-reported job statistics"

(¶0041), "The GRRL automatically compares job processing data for each job and each

resource against related SLA criterion" (¶0041) and "the client's job is submitted, and

SLA monitoring begins…When a job completes, the SLA monitoring also stops. The job

results are compared against SLA, including consideration of resource self-reported

statistics" (¶0047). See also Applicants Figure 1. The specification recites that the SLA

is monitored during the job, and the job results, and the self-reports, are then measured

against the SLA, and there is no mention of accessing the SLA, just that the SLA is

created and monitored. This is different than what has been claimed, since the claim

recites that the SLA is not accessed until the self-reports are received. Correction is

requested.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims **14 and 40 – 43** are rejected under 35 U.S.C. 103(a) as being unpatentable

over Benjamin et al. (U.S. Patent Publication 2002/0107723, hereinafter Benjamin) in

view of Main et al. (U.S. Patent 5,893,905, hereinafter Main) in further view of Shoquist

et al. (U.S. Patent 5,361,199, hereinafter Shoquist).

7.   In respect to claim **14, 40 and 41**, Benjamin discloses:

        responsive to receiving job results, accessing one or more client-driven

performance criteria definitions (see at ¶0027 and ¶0028, which discloses if the data

relates to a service already performed, the matrix generator determines if a supplier-

matrix exists for the supplier... the matrix generator generates a job attribute factor and

performance vector (i.e. responsive to receiving job results, accessing one or more client-

driven performance criteria definitions), and ¶0034, wherein Benjamin discloses that the

performance of a supplier is quantified in a performance vector, P_{des}, and that the desired

performance is specified when looking for a supplier (i.e. client-driven performance

criteria)).

        Benjamin further discloses receiving one or more job results from a grid resource

(¶0034, actual performance supplied by buyer in post-job questionnaire (i.e. job results)),

        performing by a logical device an analysis of said job results (e.g. actual

performance) against said client-driven performance criteria (e.g. desired performance

specified) (see at least ¶0052-¶0070 wherein Benjamin discloses updating the supplier

rating matrix and using the supplier matrix to evaluate a supplier; ¶0035-¶0047, wherein

Benjamin discloses equations for updating a supplier rating matrix),

said analysis comprising performing one or more analyses pertaining to job types,

(see at least ¶0038 and ¶0039 wherein Benjamin discloses Actual Performance and

Attributes of job i; and ¶0071 - ¶0075 wherein Benjamin discloses using the disclosed

method with multiple jobs, each job with different tolerances (i.e. job types));

said analysis comprising determining one or more sub-ratings selected from at

least one of (i.e. group comprising of) percentage of jobs completed, percentage of jobs

completed within specified time constraints, an interactiveness rating, a cost compliance

rating (see at least ¶0050, wherein Benjamin discloses each group of columns

corresponds to a job attribute (i.e. sub-rating) wherein a job attribute (i.e. sub-rating) is a

measurable characteristic of the jobs such the turnaround time (i.e. percentage of jobs

completed within specified time constraints)).

Benjamin further discloses producing a grid resource rating table having sub-

ratings, (see at least Tables 1 – 7; see also at least ¶0050, wherein Benjamin discloses

each group of columns corresponds to a job attribute, wherein a job attribute is a

measurable characteristic of the jobs).

Benjamin further discloses including producing a human-readable report,

producing a computer-readable report (see at least ¶0007, wherein Benjamin discloses the

invention can be provided on a webpage and/or on a personal computer (i.e. human

readable and computer readable report)).

Benjamin does not explicitly disclose receiving one or more grid resource self-

reports, each self-report having statistics regarding job processing.

Main discloses statistics regarding job processing (i.e. self-reports) (see at least

column 4, lines 15-21, wherein Main discloses job performance data specified actual

performance of a jobs current and previous executions; and see at least column 4, lines 43 – 49, which discloses storing actual and SLA performance data).

It would have been obvious to one of ordinary skill in the art to include in the client driven performance supplied criteria supplied by the buyer, and in the analysis of job results against said client driven performance criteria, of Benjamin, the statistics regarding job processing as disclosed by Main since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of having additional statistical job result data in addition to the jobs results from which to analyze against client driven performance criteria from to rank a supplier.

Benjamin does not explicitly accessing a Service Level Agreement.

Main discloses accessing a Service Level Agreement (see at least column 1, lines 36-40 and see at least column 4, lines 43 – 65, which discloses storing actual and SLA performance data and compare actual job performance data with SLA data.

It would have been obvious to one of ordinary skill in the art to include in the art at the time of the invention to include in the accessing of client-driven performance criteria of Benjamin the accessing of a Service Level Agreement as disclosed in Main since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of having the Service Level Agreement define the job data associated with the proposed job.

Neither Benjamin nor Main explicitly disclose each self-report having statistics regarding Online Transaction Processing job processing. However, the recited limitation "statistics regarding Online Transaction Processing job processing" is merely

nonfunctional descriptive material, since it is merely describing the type of source which

the data is from, then statistics are about this data, and the statistics are then on a report.

The steps of: receiving a grid self-report, accessing one or more Service Level

Agreements, receiving one or more job results, performing an analysis of said received

job results and said received self-reports, and producing a grid resource table would be

performed the same regardless of the data. Thus, this descriptive material will not

distinguish the claimed invention from the prior art in terms of patentability, see *In re*

Gulack, 217 USPQ 401 (Fed. Cir. 1983), *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994);

Therefore it would have been obvious to one of ordinary skill in the art at the time

of the invention to have a report with statistics regarding any kind of data, because such

data does not functionally relate to the steps in the method claim.

Neither Benjamin nor Main explicitly discloses producing a rank-ordered Grid

Vendor Rating Table.

Shoquist discloses producing a list of suppliers ranked according to certain

criteria (i.e. a rank-ordered Grid Vendor Rating Table) (see at least column 6, lines 50-59,

FIG.10).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to include in the ratings of suppliers of the combined invention of Benjamin

and Main the producing the ranked list of suppliers as disclosed by Shoquist since the

claimed invention is merely a combination of old elements, and one of ordinary skill in

the art would have recognized that it would produce a predictable result of displaying the

ratings of each supplier in a single table, and would further produce the predictable result

of accessing the data from the table, to indicate which supplier met the desired

performance criteria, since the data used is the same, just displayed in a table.

In further regards to claim **41**, Benjamin further discloses a computing device (i.e.

hardware means) (see at least ¶0024 and FIG. 1b).

8.   In respect to claim **42**, Benjamin discloses wherein the hardware means comprises

a microprocessor (see at least ¶0024, which discloses any personal computer (e.g. 286,

386, 486, Pentium etc).

9.   In respect to claim **43**, Benjamin discloses wherein the hardware means comprises

a an integrated circuit (see at least ¶0024, which discloses any personal computer (e.g.

286, 386, 486, Pentium etc). Examiner notes that a microprocessor is an integrated

circuit.

Conclusion

10.   The prior art made of record and not relied upon considered pertinent to

Applicant's disclosure.

      a.   Aycock et al. (U.S. Patent 5,765,138) discloses interactive evaluation of

      potential vendors.

      b.   Lidow (U.S. Patent Pub. 2002/0019761) discloses supply chain

      architecture and forecasts compared to contractual agreements.

      c.   Spencer (U.S. Patent 6,356,909) discloses automated responses to and

      evaluations of request for proposals.

      d.   Elnozahy et al. (U.S. Patent Pub. 2002/0077836) discloses verification of service level agreements.

11.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

    A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

    Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALAN MILLER whose telephone number is (571)270-5288. The examiner can normally be reached on Mon - Fri, 10:00am - 6:00pm.

    If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BRADLEY BAYAT can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. M./
Examiner, Art Unit 3624

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624